

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

**FILED**  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
12:02 am  
FEB 17 2006  
DAVID J. WALAND, CLERK

LE ANN MCATEER,

Plaintiff,

v.

SILVERLEAF RESORTS, INC.,

Defendant.

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BY  
DEPUTY \_\_\_\_\_

CIVIL ACTION NO. 6:06-cv-68

**NOTICE OF REMOVAL**

Defendant files this Notice of Removal pursuant to 28 U.S.C. §§ 1331 and 1446, and states as follows:

1. Plaintiff Le Ann McAteer has set forth her claims against Defendant in an Original Petition styled as *Le Ann McAteer v. Silverleaf Resorts, Inc.*, and filed with the District Court, 402nd Judicial District of Wood County, Texas, Cause No. 2006-040, a true and correct copy of which is attached hereto as Exhibit A.
2. This action, as shown below, is one over which this Court has original jurisdiction under the provisions of 28 U.S.C. §§ 1331, 1337, and 1367 and may be removed to this Court by Defendant pursuant to the provisions of 28 U.S.C. §§ 1441 and 1446.
3. Because this is a civil action brought in state court and of which this Court has original jurisdiction, Defendants are entitled to remove this action from state court under 28 U.S.C. §§ 1331, 1337, 1367, 1441 and 1446 to this Court, which is situated within the judicial district and division in which the action is now pending.
4. By virtue of the authority of Metropolitan Life Insurance Co. v. Taylor, 481 U.S. 58 (1987), and Pilot Life Insurance Co. v. Dedeaux, 481 U.S. 41 (1987), any and all claims that

relate to an employee benefit plan are completely preempted by ERISA. Plaintiff's attempt to seek judicial interpretation and construction of her claims, which relate to an employee benefit plan in state court is, therefore, preempted.

5. Furthermore, Plaintiff is obligated pursuant to a written agreement to submit to arbitration any and all claims that she may have against her former employer, Silverleaf Club, as well as the named Defendant Silverleaf Resorts, Inc. Accordingly, Plaintiff's attempt to seek judicial interpretation and construction of her claims is preempted by the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.*

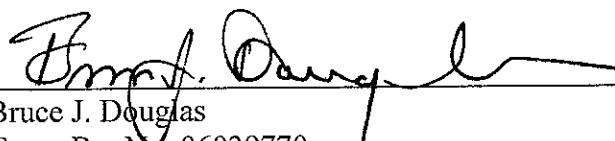
6. This Notice of Removal is timely under Section 1446(b) of Title 28 of the United States Code because the Plaintiff's Citation and Original Petition and Request for Disclosure in this action were served on January 26, 2006. This Notice of Removal is filed within 30 days of service of Plaintiff's Citation and Original Petition and Request for Disclosure and is timely filed under 28 U.S.C. § 1446(b).

7. Written notice of the filing of this Notice will be given by counsel for Defendant to counsel for Plaintiff, as provided by law, and a copy of this Notice will be filed with the clerk of court in the District Court, 402nd Judicial District of Wood County, Texas.

WHEREFORE, Defendant respectfully requests that this action be removed from the District Court, 402nd Judicial District of Wood County, Texas, to the United States District Court for the Eastern District Texas, Tyler Division and that this Court enter such further orders as may be necessary and appropriate.

Dated: 2-16-06

Respectfully submitted,

By: 

Bruce J. Douglas

Texas Bar No. 06039770

LARKIN HOFFMAN DALY & LINDGREN LTD.

1500 Wells Fargo Plaza

7900 Xerxes Avenue South

Minneapolis, Minnesota 55431-1194

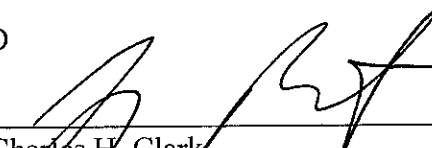
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Lead Attorney

AND

Dated: 2-17-06

By: 

Charles H. Clark

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SILVERLEAF CLUB, AND  
PLAN ADMINISTRATOR FOR SILVERLEAF CLUB  
EMPLOYEE INJURY BENEFIT PLAN,  
AND NAMED DEFENDANT SILVERLEAF  
RESORTS, INC.

OF COUNSEL:

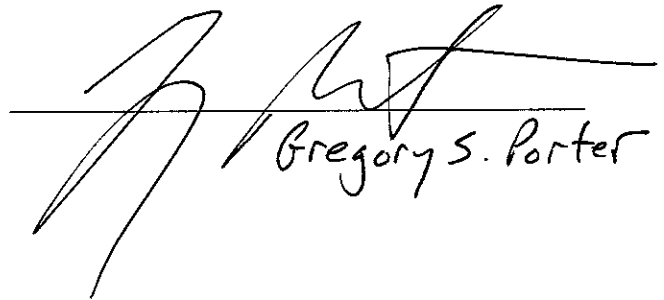
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ATTORNEYS FOR DEFENDANT  
SILVERLEAF RESORTS, INC.

**CERTIFICATE OF SERVICE**

I certify that, on February <sup>17<sup>th</sup></sup>, 2006, I caused to be mailed a true and correct copy of the foregoing Notice of Removal by U.S. Mail, certified, return receipt requested to plaintiff's counsel of record at his last known address:

Rex A. Nichols, Jr., Esq.  
Nichols & Nichols, P.C.  
1703 Judson Road  
P.O. Box 2623  
Longview, TX 75601-2914



Gregory S. Porter

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